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CHARLES ELMORE CRO

Supreme Court of the United States

OCTOBER TERM, 1935.

No. ——. 649

R. C. TWAY COAL COMPANY,
KENTUCKY CARDINAL COAL CORPORATION,
HARLAN-WALLINS COAL CORPORATION,
CREECH COAL COMPANY,
HARLAN CENTRAL COAL COMPANY,
HARLAN FUEL COMPANY,
CRUMMIES CREEK COAL COMPANY,
THREE POINT COAL COMPANY,
CLOVER FORK COAL COMPANY,
HARLAN COLLIERIES COMPANY,
HIGH SPLINT COAL COMPANY,
CORNETT-LEWIS COAL COMPANY,
KENTUCKY KING COAL COMPANY,
P V & K COAL COMPANY,
MARY HELEN COAL CORPORATION,
GREEN-SILVERS COAL CORPORATION,
PIONEER COAL COMPANY,
BLACK STAR COAL COMPANY,
GATLIFF COAL COMPANY, Petitioners and Appellants Below.

versus

SELDEN R. GLENN, Individually, and as Collector of Internal Revenue for the District of Kentucky, Respondent and Appellee Below.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof.

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Washington, D. C.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1935.

No. ———.

R. C. TWAY COAL COMPANY,
KENTUCKY CARDINAL COAL CORPORATION,
HARLAN-WALLINS COAL CORPORATION,
CREECH COAL COMPANY,
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MARY HELEN COAL CORPORATION,
GREEN-SILVERS COAL CORPORATION,
PIONEER COAL COMPANY,
BLACK STAR COAL COMPANY, AND
GATLIFF COAL COMPANY,
Petitioners and Appellants Below,

v.

SELDEN R. GLENN, INDIVIDUALLY, AND AS COLLECTOR OF INTERNAL REVENUE EOR THE DISTRICT OF KENTUCKY,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

Your petitioners respectfully show:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is a suit in equity brought in the United States District Court for the Western District of Kentucky by the petitioners herein, all of whom are bituminous coal producers operating in Harlan County, Kentucky, against Selden R. Glenn, individually, and as Collector of Internal Revenue for the District of Kentucky, respondent herein, in which the petitioners, as plaintiffs, challenged the constitutionality of the Act of August 30, 1935, known as the Bituminous Coal Conservation Act of 1935 (Sections 801-827, both inclusive, Title 15, U. S. C. A., October, 1935, Special Pamphlet), and sought an injunction against the collection from the petitioners of the so-called tax attempted to be imposed by Sections 3 and 9 of the Act upon bituminous coal producers who refuse to accept the Code required by Section 4 of the Act to be formulated according to its terms and requirements.

The petitioners contended in their bill (R. 1-15) that the Congress of the United States under the Constitution has no jurisdiction over and no power to legislate upon the matters required by Section 4 of the Act to be embraced in the Bituminous Coal Code therein required to be formulated, and particularly that the fixing of minimum and maximum prices of coal free on board transportation facilities at the mines, as therein authorized; the requirement that coal shall be sold by

producers to all customers similarly circumstanced at the same price; the regulation and control of contracts for the sale of coal, and the regulation of the relations between producers and their employees in the production of coal, including the regulation and fixing of wages and hours of service, as authorized in Part III of Section 4, are each and all matters not within the competency of Congress under the Constitution of the United States; and that the attempted regulation by Congress of the above enumerated matters is violative of the due process clause of the Fifth Amendment to the Constitution of the United States, and of the rights of the States and the people, reserved to them by the Tenth Amendment. It was further alleged that Section 4 is unconstitutional, for the reason that it attempts to delegate legislative power.

It was charged that Sections 3 and 9 of the Act, in so far as they purport to impose upon those producers of bituminous coal who refuse to accept and operate under the provisions of Section 4 of the Act and of the Code formulated thereunder a tax equal to fifteen per centum of the sale price at the mine of the coal produced by them, while exempting producers who accept the Code from ninety per cent of such tax, is not a good faith exercise of the taxing power conferred upon Congress by Clause 1 of Section 8, Article 1 of the Constitution, but is an unconstitutional attempt on the part of Congress, under the guise of taxation, to punish those producers of bituminous coal who are unwilling to surrender their constitu-

tional right to conduct their business free of unconstitutional interference and regulation by Congress, and that the attempted imposition of such penalty operates to deprive petitioners of their property without due process of law, in violation of the Fifth Amendment, and is an unconstitutional invasion of the rights reserved to the petitioners by the Tenth Amendment to the Constitution of the United States.

The bill contained allegations designed to show the inapplicability of Section 3224, Revised Statutes (Section 1543, Title 26, U. S. C. A., 1935 Compilation; Section 154, Title 26, U. S. C. A., Old Compilation), which prohibits suits for the purpose of enjoining the assessment or collection of a tax.

The answer (R. 16-23) denied many of the allegations of the bill and its amendments, and paragraph 2 gave an extended review of the economic history of the bituminous coal industry, its importance to the Nation, and its alleged direct relation to, and effect upon, interstate commerce.

The petitioners introduced evidence to sustain the jurisdictional allegations of the bill; to show the entirely intrastate character of the production end of their business; to show that a substantial part of the selling end of their business is intrastate commerce; and to show the existence of such extraordinary and unusual conditions as to render Section 3224, Revised Statutes (Section 1543, Title 26, U. S. C. A., 1935 Compilation; Section 154, Title 26, U. S. C. A., Old Compilation), inapplicable (R. 90-121).

The only proof offered by the respondent (R. 123-204) was for the purpose of sustaining the allegations of paragraph II of the answer, but objection to this testimony was sustained (R. 37).

The District Court delivered a written opinion (R. 38-80), holding that Section 3224, Revised Statutes (Section 1543, Title 26, U. S. C. A., 1935 Compilation; Section 154, Title 26, U. S. C. A., Old Compilation) was inapplicable, and that therefore petitioners were entitled to maintain the action, but that the Act was not subject to the constitutional objections urged by the petitioners, but valid in its entirety. A decree was entered in accordance with that opinion (R. 85-87).

The case was then appealed to the United States Circuit Court of Appeals for the Sixth Circuit, the record having been filed in that court on December 11, 1935, and there is filed herewith a duly certified copy of the printed transcript of the record on said appeal, together with twenty-nine additional copies thereof.

The case has not been heard, submitted or decided by that court.

II.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The statute here involved vitally affects a great industry of the Nation, and presents grave constitutional questions; and the public interest will be promoted by a prompt settlement in this court of the questions involved.

2. The District Court, in holding that in the enactment of the law Congress did not transcend its constitutional powers, decided a Federal constitutional question in a way probably in conflict with the applicable decisions of this court.

PRAYER FOR WRIT.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in a case numbered and entitled on its docket No. 7283, R. C. Tway Coal Company, *et al.*, Appellants, v. Selden R. Glenn, Individually, and as Collector of Internal Revenue for the District of Kentucky, Appellee; and that the said decree of the United States District Court for the Western District of Kentucky may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

R. C. TWAY COAL COMPANY, ET AL.,
Petitioners.

By CHAS. I. DAWSON,
Counsel for Petitioners.

WOODWARD, DAWSON & HOBSON,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1935.

R. C. TWAY COAL COMPANY, ET AL., - *Petitioners,*

v.

SELDEN R. GLENN, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF KENTUCKY, - - *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINION OF COURT BELOW.

The opinion of the United States District Court for the Western District of Kentucky (R. 38-80) was rendered November 14, 1935, and has not been officially reported.

II.

JURISDICTION.

1. The decree of the United States District Court for the Western District of Kentucky, a review of which is here sought, was entered November 14, 1935

(R. 85-87). An appeal to the United States Circuit Court of Appeals for the Sixth Circuit was allowed November 23, 1935 (R. 222-223), and transcript of record was filed in the United States Circuit Court of Appeals for the Sixth Circuit on December 11, 1935. The case has not yet been heard or submitted in that Court, as is shown by the certificate of the Clerk of that Court appended to the certified copy of the transcript filed herein.

2. The statutory provision, which is relied upon to sustain the jurisdiction of this Court, is Section 240 of the Judicial Code, as amended by Act of February 13, 1925 (Sec. 347, Title 28 U. S. C. A.).

3. The suit is one in equity, of a civil nature, arising under the Constitution and laws of the United States (see Bill, R. 1-15) and the matter in controversy as to each of the petitioners was alleged in the Bill (R. 2) to exceed the sum of three thousand ($3,000.00) dollars and so proven by the evidence (R. 90-121) and so found by the Court (R. 81). The decree of the District Court was not an interlocutory one, but was a final decree entered after the introduction of proof and full hearing.

III.

STATEMENT OF THE CASE.

The statement in the preceding petition for writ of certiorari under I, pages 1-5, is hereby adopted and made a part of this brief without further elaboration.

IV.

SPECIFICATION OF ERRORS.

Petitioners intend to urge and rely upon each of the errors assigned in their assignment of errors in the District Court (R. 220), which are as follows:

"1. The Court erred in holding that the Bituminous Coal Conservation Act of 1935 is constitutional, and a valid exercise of the power of Congress to regulate interstate commerce.

"2. The Court erred in holding that said Act is not violative of the Fifth and Tenth Amendments to the Constitution of the United States.

"3. The Court erred in holding that said Bituminous Coal Conservation Act does not improperly delegate legislative power.

"4. The Court erred in holding that Sections 3 and 9 of the Act are a valid exercise of the power of Congress to impose penalties for the purpose of coercing compliance with the regulations of the Act dealing with interstate commerce.

"5. The Court erred in holding that Sections 3 and 9 of the Act do not deprive the plaintiffs of their property without due process of law, in violation of the Fifth Amendment.

"6. The Court erred in holding that Sections 3 and 9 of the Act do not violate the rights reserved to the respective States and to the people under the Tenth Amendment to the Constitution of the United States.

"7. The Court erred in holding that plaintiffs are not entitled to the relief sought in their bill as amended, and in dismissing the action at the cost of the plaintiffs.

"8. The Court erred in refusing to hold that the Act is an unconstitutional attempt on the part of Congress to regulate matters not within the competency of Congress.

"9. The Court erred in refusing to hold that the Congress of the United States, under the Constitution, has no jurisdiction over and no power to legislate upon the matters required by Section 4 of the Act to be embraced in the Bituminous Coal Code therein required to be formulated, and particularly in refusing to hold that the fixing of minimum and maximum prices of coal free on board transportation facilities at the mines, and the regulation and control of contracts for the sale of coal, are not within the competency of Congress under the Constitution.

"10. The Court erred in refusing to hold that the regulation of the relations between producers of bituminous coal and their employees in the production of coal, including the regulation and fixing of wages and hours of service, as authorized in part III of Section 4 of the Act, are each and all matters not within the competency of Congress under the Constitution of the United States.

"11. The Court erred in refusing to hold that the attempted regulation by Congress of the matters enumerated in the 9th and 10th assignments herein, and of the matters required by Section 4 of the Act to be embraced in the Bituminous Coal

Code therein provided for, is violative of the due process clause of the Fifth Amendment to the Constitution of the United States, and of the reserved rights of the States and of the people, secured to them by the Tenth Amendment.

"12. The Court erred in refusing to hold that Sections 3 and 9 of the Act, in so far as they purport to impose upon those producers of bituminous coal who refuse to accept and operate under Section 4 of the Act and of the Code formulated thereunder, a tax equal to fifteen per cent of the sale price at the mine of the coal produced by them, is not a good-faith exercise of the taxing power conferred upon Congress by Clause 1, Section 8, Article 1, of the Constitution of the United States, but is an unconstitutional attempt on the part of Congress, under the guise of taxation, to punish those producers of coal who are unwilling to surrender their constitutional right to conduct their business free of unconstitutional interference and regulation by Congress and in refusing to hold that such penalties operate to deprive the plaintiffs of their property without due process of law, in violation of the Fifth Amendment, and is an unconstitutional invasion of the rights reserved to the plaintiffs by the Tenth Amendment to the Constitution of the United States.

"13. The Court erred in refusing to hold that Section 4 of the Act is an unconstitutional delegation of legislative power.

"14. The Court erred in refusing to hold the Act unconstitutional in its entirety.

"15. The Court erred in refusing to hold the Act invalid in its entirety, because of the inseparability of its provisions.

"16. The Court erred in refusing to grant the plaintiffs the relief sought, and particularly in refusing to grant them a permanent injunction against the collection of the penalties or so-called taxes sought to be imposed upon them by Sections 3 and 9 of the Act for their failure to accept and operate under the Code provided for by Section 4 of the Act.

"17. The Court erred in striking on its own motion the statement of Roy Carson.

"18. The Court erred in overruling plaintiffs' motion to strike paragraph II of defendant's answer."

V.

ARGUMENT.

POINT 1.

The Decision of the District Court, Holding that Congress, Under the Commerce Clause Has the Power to Regulate the Production of Bituminous Coal, is Contrary to and in Conflict With the Decisions of This Court.

Section 4 of the Act provides:

"The provisions of this section shall be formulated by the Commission into a working agreement, to be known as the 'Bituminous Coal Code,' and herein referred to as the 'Code.' Producers accepting and operating under its provisions are herein referred to as 'Code members.'

"For the purpose of carrying out the declared policy of this Act, the Code shall contain the following conditions, provisions and obligations which will tend to regulate interstate commerce in bituminous coal and transactions directly affecting interstate commerce in bituminous coal:"

Then follows Part I, dealing with certain organization matters; Part II, dealing with the marketing of coal by Code members; and Part III, dealing with the labor relations between producers of coal and their employees.

Part III provides that district boards and Code members shall accept, and the Code formulated under Section 4 shall have incorporated therein, in brief the following conditions:

(a) All producers accepting and operating under the Code are prohibited from interfering with or denying the right of their employees to organize and bargain collectively and from requiring any employee as a condition of employment to join a company union, and from denying employees the right to select their own check weighman to inspect the weighing and measuring of coal, and from requiring as a condition of employment that their employees shall live in company houses or trade at the store of their employer.

(b) That whenever maximum daily or weekly hours of labor are agreed upon in any contract or contracts negotiated between the producers of more than two-thirds of the annual national tonnage production of bituminous coal for the preceding calendar year and the representatives of more than one-half of the mine

workers employed, such maximum hours of labor shall be accepted by and binding upon all Code members; and that any wage agreement or agreements negotiated by collective bargaining in any district or group of two or more districts between representatives of producers of more than two-thirds of the annual tonnage production of such district, or each of such districts, in a contracting group during the preceding calendar year and representatives of the majority of the mine workers therein, shall be filed with the labor board provided for in said section and shall be accepted as the minimum wages for the various classifications of labor by the Code members operating in such district or group of districts.

It is thus apparent that the Act undertakes to regulate the relations between coal producers and the men employed in the production thereof, including hours of service and wages.

The District Court, in Paragraph 4 of the decree (R. 85) held:

> "The Bituminous Coal Conservation Act is a constitutional exercise of the power of Congress to regulate interstate commerce and is not violative of the Fifth or Tenth Amendments to the Constitution of the United States, nor does it improperly delegate legislative power."

This ruling of the District Court was necessarily based either upon the view of that Court that the production of coal for sale and shipment in part in interstate commerce is interstate commerce, or so directly

affects interstate commerce as to authorize Congress to regulate same under the commerce clause of the Constitution.

A long line of decisions by this Court, it seems to us, thoroughly establishes that production of coal is not interstate commerce, or commerce of any sort. In support of this statement we cite the following cases: *United States* v. *E. C. Knight & Co.*, 156 U. S. 1; *Kidd* v. *Pearson*, 128 U. S. 1; *Hammer* v. *Dagenhart*, 247 U. S. 251; *Crescent Cotton Oil Co.* v. *Mississippi*, 257 U. S. 129; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, each holding that manufacturing is not commerce; *Delaware, Lackawanna & Western R. R. Co.* v. *Yurkonis*, 238 U. S. 439; *Heisler* v. *Thomas Colliery Co.*, 260 U. S. 245; *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, each holding that coal mining is not interstate commerce; *Oliver Iron Co.* v. *Lord*, 272 U. S. 172, holding that the mining of iron ore is not interstate commerce; and *Schecter Poultry Corporation* v. *United States*, 295 U. S. 495, holding that the slaughtering and preparation of fowls for market is not interstate commerce.

We also cite the cases of *United States* v. *Knight, supra; Kidd* v. *Pearson, supra; Heisler* v. *Thomas Colliery Co., supra; Oliver Iron Co.* v. *Lord, supra; Hammer* v. *Dagenhart, supra; Utah Power & Light Co.* v. *Pfost, supra;* as fully sustaining the proposition that Congress is without power under the commerce clause to regulate either manufacture or production, notwithstanding the fact that the articles manufactured or

produced are intended for sale in interstate commerce or may have been sold in interstate commerce before the manufacture or production thereof.

We also cite and rely upon the case of *Schecter Poultry Corporation* v. *United States, supra,* in support of our contention that the production of coal does not, and in the constitutional sense can not, so directly affect interstate commerce as to bring that activity under the control of Congress under the commerce clause.

POINT 2.

The Decision of the District Court that Congress, Under the Commerce Clause, May Fix Prices for Coal Sold in Interstate Commerce, and Regulate the Contracts in Respect of Such Sales, is Contrary To and in Conflict With the Decisions of This Court.

The evidence in this case (R. 89-121) shows, and the Court found (R. 81-85) that the produeers of bituminous coal, including the petitioners, sell substantially all the coal produced by them f. o. b. railroad cars at the mines, to be immediately shipped, in part to customers in the State where produced and in part to purchasers in other States. Under the authority of *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, and *Pennsylvania Railroad Co.* v. *Clark Bros. Coal Mining Co.,* 238 U. S. 456, we concede that sales to customers in other States under such circumstances is interstate commerce.

It is our contention, however, that this fact does not give Congress, under the commerce clause, the power to fix prices for such interstate sales of coal, nor to regulate the contracts with reference thereto, as the fixing of prices and the regulation of contracts have no reasonable relation to any of the purposes or objects which Congress may take into consideration in exercising its power to regulate interstate commerce.

Furthermore, if it be conceded that under its power to regulate interstate commerce Congress has the power in any case to fix the prices and regulate contracts with reference to the sale of articles in interstate commerce, it has no such power with reference to bituminous coal, as the business of producing and selling bituminous coal is not one so affected with a public interest as to justify price-fixing and the regulation of sale contracts in respect thereto by Congress.

In support of our contention we cite the cases of: *Wolff Packing Co.* v. *Court of Industrial Relations,* 262 U. S. 522; *Tyson & Bro.* v. *Banton,* 273 U. S. 418; *Williams* v. *Standard Oil Co.,* 278 U. S. 235; *Ribnik* v. *McBride,* 277 U. S. 350; *Fairmont Creamery Co.* v. *Minnesota,* 274 U. S. 1; *Atkins* v. *Children's Hospital of the District of Columbia,* 261 U. S. 525; *New State Ice Co.* v. *Liebmann,* 285 U. S. 262.

POINT 3.

The Decision of the District Court Which, in Effect, Held that Congress, Under the Commerce Clause of the Constitution Has the Right to Regulate All Sales of Bituminous Coal and to Fix Prices Therefor, Whether Sold in Interstate or Intrastate Commerce, is Contrary To and in Conflict With the Decisions of This Court.

It was proven in this case (Testimony of D. B. Cornett, R. 107), and found by the Court (Paragraph 6, Findings of Fact, R. 82) that approximately fourteen per centum of all the bituminous coal produced in the United States is sold to customers in the State in which it is mined, and in the same paragraph of the findings of fact, the Court found that a substantial percentage of all the coal produced by each of the petitioners is sold to customers in the State of Kentucky, in which State their mines are located.

It is clear that the price fixing and contract regulation provisions of Section 4 of the Act are intended to apply to all sales made by Code members, whether made in interstate or intrastate commerce. It is our contention that such being the broad sweep of the statute, the entire statute in this respect must fail: First, because Congress has no power to regulate in any way intrastate sales; and second, having attempted to cover a broader field than was assigned to it by the Constitution, the entire price fixing and contract regulation features of the Act must fail.

We cite in support of this proposition the following cases: *Employers' Liability Cases,* 207 U. S. 463;

Trade-mark Cases, 100 U. S. 82; *Butts* v. *Merchants Transportation Co.,* 238 U. S. 126; *James* v. *Bowman,* 190 U. S. 127, 139; *I. C. Railroad Co.* v. *McKendree,* 203 U. S. 514; *United States* v. *JuToy,* 198 U. S. 252; *United States* v. *Reese,* 92 U. S. 214; *Baldwin* v. *Franks,* 120 U. S. 678.

POINT 4.

Assuming the District Court Was Correct in Holding that Congress, Under the Commerce Clause, Has the Power to Fix Prices and to Regulate Contracts of Sale, the Failure of the District Court to Hold the Entire Act Invalid Because of the Attempt to Regulate Production is Contrary To and in Conflict With the Decisions of This Court.

An examination of Section 4 of the Act discloses that the regulation of production, and particularly the regulation of the relations between the producer and his employees, including, under certain conditions therein set out, the regulation of hours of service and wages, was intended to be an integral and vital part of the Code required to be formulated in accordance with the terms of that section, and to be observed by all Code members.

We have heretofore cited under Point 1 of the Argument of this brief authorities showing that Congress has no power to regulate production, and it is our contention that Part III of Section 4, which deals with the production end of the industry, so vitally affects the dominant aim and purpose of the entire

statute that the courts are not justified in sustaining any part of the statute when the part just referred to is stricken. Of course, no proof is required in demonstration of the fact that uniformity of prices in the different price areas set up in the Act for the different grades of coal can not be secured without regulating the cost of production.

In support of this contention we cite: *Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Lynch* v. *United States*, 292 U. S. 571; *Dorchy* v. *Kansas*, 264 U. S. 286; *Hill* v. *Wallace*, 259 U. S. 44; *Railroad Retirement Board* v. *Alton Railroad Co.*, 295 U. S. 330.

POINT 5.

The Holding of the District Court that Sections 3 and 9 of the Act, While Not Revenue Provisions, are a Valid exercise of the Power of Congress to Impose Penalties for the Purpose of Coercing Compliance With the Regulations of the Act Dealing With Interstate Commerce, is Contrary To and in Conflict With the Decisions of This Court.

Section 3 of the Act imposes upon the sale or other disposal of all bituminous coal produced in the United States a monthly excise tax of fifteen per centum on the sale price at the mine, or, in the case of captive coal, as defined in the Act, the fair market value of such coal at the mine, but that section, as well as Section 9, exempts those producers who accept the provisions of the Code and operate under it from the payment of ninety per centum of such tax.

It is our contention that these sections are not a good faith exercise of the taxing power conferred upon Congress by Clause 1, Section 8, Article 1 of the Constitution; nor do they represent a legitimate exercise of the taxing power for the purpose of coercing compliance with the legitimate regulation of interstate commerce, but are an unconstitutional attempt, under the guise of taxation, to punish those producers of coal who are unwilling to surrender their constitutional right to conduct their business free of unconstitutional interference and regulation by Congress, and that the imposition of such penalties operates to deprive the petitioners of their property without due process of law, in violation of the Fifth Amendment, and is an unconstitutional invasion of the rights reserved to the petitioners by the Tenth Amendment to the Constitution of the United States.

In support of this proposition we cite: *Hammer* v. *Dagenhart,* 247 U. S. 251; *Bailey* v. *Drexel Furniture Co.* (Child Labor Case), 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; *McCulloch* v. *Maryland,* 4 Wheat. 316.

POINT 6.

The Ruling of the District Court, to the Effect that Section 4 of the Act is Not an Improper Delegation of Legislative Power, is Contrary To and in Conflict With the Decisions of This Court.

Price fixing and the regulation of contracts for the sale of coal, if authorized at all, are undoubtedly in the nature of legislative acts, and of course, as such, must be exercised by the legislative department.

It seems to us that Part II of Section 4, which deals with these subjects, is so general and indefinite as to furnish no standards to guide the authorities in performing this function. Certainly that part of Section 4 which undertakes to fasten upon all Code members whatever hours of service may be agreed upon between more than two-thirds of the producers of the annual national tonnage for the preceding calendar year and representatives of more than one-half of the mine workers employed, and upon Code members operating in any district or group of districts, whatever minimum wages may be agreed upon between the producers of more than two-thirds of the annual tonnage in such territory and representatives of the majority of the mine workers therein, amounts to a complete surrender of legislative power to private groups. If we are correct in this contention, of course the Act is invalid.

In support of our contention on this point we cite: *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; and *Schecter Poultry Corporation* v. *United States,* 295 U. S. 495.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the constitutionality of the Act here under attack may be promptly, finally and authoritatively determined; and to that end a writ of certiorari should be granted, and this Court should review the decision of the United States District Court for the Western District of Kentucky, without awaiting a decision by the United States Circuit Court of Appeals for the Sixth Circuit, and that upon such review, the decree of the District Court should be reversed.

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